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ABSTRACT

The assumption of this study is that most principals do not have the time to devote to reading court cases, even though they know it is important. In day-to-day activities, the principal has continuous contact with teachers and students and enforces many school policies and regulations involving both almost daily. This handbook attempts to provide at least rudimentary legal awareness in an easy-to-use format with a bibliography that facilitates detailed study when appropriate. The current literature from 1970 on in the areas of teacher and student rights is reviewed. One of the main purposes of this handbook is to provide information using the ideas and quotes from authorities and writers in the field of school law. No attempt has been made to make this a detailed legal research document. Readable and useful information that a building principal may find valuable in his work has been compiled. (Author/IRT)

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FEDERAL COURT CASES: A PRINCIPAL'S HANDBOOK ON TEACHER AND STUDENT RIGHTS

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THE PRINCIPAL AND TEACHER RIGHTS

INTRODUCTION

The role of the building principal has changed greatly in recent years. A principal source of this change has been legal decisions made in federal courts. Though the principal has a definite legal status while performing his duties at school as an officer of the state, so many court cases have been heard in recent years dealing with teachers and students that many principals simply have been unable to keep up with the trend of court decisions. If a principal had the time and resources, he could provide for himself a measure of legal expertise. The assumption of this study is that most principals do not have the time to devote to reading court cases, even though they know it is important. In day-to-day activities, the principal has continuous contact with teachers and students and enforces many school policies and regulations involving both almost daily. This handbook attempts to provide at least rudimentary legal awareness in an easy to use format with a bibliography that facilitates detailed study when appropriate.

This study will be a review of the current literature in the area of teacher and student rights. One of the main purposes of this handbook will be to provide information to the principal using the ideas and quotes from authorities and writers in the field of school law. No attempt has been made to make this a detailed legal research

document. Readable and useful information has been compiled that a building principal may find valuable to him in his work.

Constitutional protection for teachers and students, as interpreted by the federal courts, comes mainly from the First Amendment which guarantees freedom of expression and the due process and equal protection clauses of the Fourteenth Amendment. The First Amendment and portions of the Fourteenth Amendment are presented below:

> Amendment I:
>
> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
>
> Amendment XIV:
>
> Section 1. . . No State shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (U. S. Constitution).

"It is evident that the law does, and must, change. Although the courts may be reluctant to abandon old ways of thinking and accept new ones, they do not hesitate to do so when the law is no longer in tune with the times - when it is out of line with current economic, political, social, and cultural conditions" (Edwards, 1971:617). "The constitution specifically protects certain individual rights guaranteed to every citizen. As a result, no laws, ordinances, rules or regulations may restrict individuals from exercising those rights which are granted by the constitution" (Gatti, 1972:67).

The handbook will provide the building principal a ready reference to federal court cases that could possibly affect him while performing his duties. A summarization and reference to the most pertinent federal court cases since 1970 in the area of teacher and student rights will hopefully be of value to principals of schools in the East Texas School Study Council.

I. THE PRINCIPAL AND THE TEACHER

When an individual signs a contract and becomes an employee of a school district as a teacher, an immediate association with the building principal begins. Most of the time this relationship is professional, cordial and sincere, with both persons intent upon providing the best possible education for the students of the community. However, teacher-administrator conflicts do arise due to continuing emotional involvement with students, parents, teachers, and other administrators. Conflicts will arise. If the problems are not handled to the satisfaction of both parties, a law suit may result.

For many years school administrators and boards of education tended to manage teaching personnel very arbitrarily. In 1967, in Keyishian v. Board of Regents,[1] the United States Supreme Court made a landmark definition of the constitutional status between public employees and private employees. The Supreme Court stated: "public employment, including academic employment, may be conditioned upon the surrender of constitutional rights which could not be abridged by direct government action." The Supreme Court further stated: "The theory that public employment which may be denied altogether may be

subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." Therefore, public employees cannot be "relegated to a watered-down version of constitutional rights" just because they happen to be public employees (Chanin, 1970:1).

In this handbook, various areas of teacher/principal confrontation will be identified. Each area will be discussed and the pertinent court cases cited will be noted and used in the discussion. The court cases are referenced in the back of the handbook if the principal would like to refer to a particular case for additional information.

II. ACADEMIC FREEDOM

One area of teacher-principal conflict that is common in today's schools is that of academic freedom. What is appropriate to say in a classroom and what is not? The Federal Courts have heard this question and this section of the handbook will discuss some of the opinions on academic freedom.

Bolmeier (1971) reported on a case which was heard in Alabama in 1970, Parducci v. Rutland.[2] This case involved an outside reading assignment which was considered by the administration to be vulgar and inappropriate material for high school students to read. The school board was informed of this situation and dismissed the teacher from her job. When the matter was taken to court, the assertion was that the teacher was dismissed in violation of the First Amendment.

In its ruling in favor of the teacher, the court declared:

> "Since the defendants have failed to show either that the assignment was inappropriate reading for high school juniors, or that it created a significant disruption to the educational processes of the school, this court concludes that plaintiff's dismissal constituted an unwarranted invasion of her First Amendment right to academic freedom." By way of expressing its concern as to the absence of standards involved in the instant case, the court continued: "When a teacher is forced to speculate as to what conduct is permissible and what conduct is proscribed, he is apt to be overly cautious and reserved in the classroom. Such a reluctance on the part of the teacher to investigate and experiment with new and different ideas is anathema to the entire concept of academic freedom." The court ruled "that the plaintiff be reinstated as a teacher for the duration of her contract, with the same rights and privileges which attached to her status prior to her illegal suspension" (Bolmeier, 1971:72-73).

Hudgins (1974) reported another case involving academic freedom in Moore v. Gaston County Board of Education.[3] In discussing this case, Hudgins pointed out that a substitute teacher, who was believed to be an atheist, was dismissed for comments made while discussing an assignment on religion in the Middle East. When questioned about it by the administration, the teacher did not say whether he had or had not made certain statements about his religious beliefs.

A Federal court overturned the dismissal. The court concluded:

> "To discharge a teacher without warning because his answers to scientific and theological questions do not fit the notions of local parents and teachers is a violation of the Establishment Clause of the First Amendment" (Hudgins, 1974:40-43).

Hudgins (1974) made further reference to a case in Iowa in 1972, Webb v. Lake Mills Community School District.[4] This case concerning academic freedom, was heard in the federal courts. The basic conflict between the Administration and the drama instructor was over the type of language used in a high school play. The teacher was reassigned out of the drama class hence the matter was taken to court. The teacher

cited the Civil Rights Act of 1871, which protects a citizen from "deprivation of rights, privileges and immunities secured by the constitution and laws."

In reporting the case, the court defined two types of academic freedom:

> "The substantive right of a teacher to choose a teaching method which. . . serves a demonstrated educational purpose, and the procedural rights of a teacher not to be discharged for use of a teaching method not proscribed by a regulation in clear and precise terms."

In its ruling, the court allowed some discretion in the use of questionable language. Since the school had no other basis for reassigning the teacher, other than the issue of academic freedom, the court ordered the school to return her former position (Hudgins, 1974: 40-43).

Chanin, writing on academic freedom in 1970, reviewed the case of Keefe v. Granakos.[5] This case dealt with a reading assignment that contained vulgarity. The teacher used a vulgar word in the classroom and was suspended from teaching. The case was heard in the U. S. Court of Appeals.

> "As the appellate court saw it, the basic question presented by this case was 'whether a teacher may, for demonstrated educational purpose, quote a 'dirty' word currently used in order to give special offense, or whether the shock is too great for high school seniors to stand'. While recognizing that the same standards applicable to obscenity laws for adult consumption might not be applicable in determining what is proper for classroom presentation, the court nonetheless concluded that the prohibition against distribution of a nonpornographic scholarly article which happens to contain offensive language cannot be tolerated in an atmosphere of academic freedom" (Chanin, 1970:11-12).

The court summarized its ruling in these terms:

> If the answer were that the students must be protected from such exposure, we would fear for their future. We do not question the good faith of the defendants in believing that some parents have been offended. With the greatest of respect to such parents, their sensitivities are not the full measure of what is proper education.

Chanin further stated that even though many public schools attempt in varying degrees to regulate what is said in the classroom, the Courts have spoken out against extreme regulation. In Wieman v. Updegraff[6], the Supreme Court stated that such regulation has the "unmistakable tendency to chill free play of the spirit which all teachers ought to especially cultivate and practice" (Chanin, 1970:12).

Nolte (1969) discussed a landmark case involving the rights of students, Tinker v. Des Moines Independent Community School District[7], where the students said their First Amendment right of freedom of speech was violated when they were suspended from school for wearing arm bands protesting the war in Vietnam. Chanin (1970) stated that the court spoke against prohibiting such activity only if it "materially and substantially interfere(s) with the requirements of appropriate discipline in the operation of the school." The court felt that teachers should not be so regulated that they would be afraid to teach. In conclusion the court stated that:

> First Amendment rights, applied in the light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school house gate.
>
> The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, [rather] than through any kind of authoritative selection" (Chanin, 1970:13).

In a further comment on academic freedom, one court took a different approach in deciding the case in favor of the teacher. In Mailloux v. Kiley[8], a teacher, while teaching his class, wrote the four letter slang word for sexual intercourse on the blackboard. The teacher was subsequently dismissed for this action. In 1971, the case was heard in court with the teacher claiming he was deprived of his First Amendments rights. The court noted that "the question whether the Constitution gives any right to use a particular teaching method or leaves the decision to the school authorities is undecided." The judge based his order for the teacher's reinstatement on the absence of a written school board policy prohibiting the particular teaching method used (Delon, 1972:40).

To conclude this section on academic freedom, Hudgins (1975:37) discussed the 1974 case of Hazelwood School District.[9] In this case, a probationary teacher objected to an ROTC program being offered in the school system. He openly discussed his opposition in his math class and urged his students to oppose the ROTC program. The school administration asked the teacher to change his conduct, but he did not. He was requested to appear before the Board of Education, but the teacher did not show up. Finally, the school administration recommended that the teacher be dismissed and the Board accepted the recommendation.

The teacher took the school district to court claiming that his right of freedom of speech had been violated. Hudgins reported the findings of the court:

> Concerning the substantive issue, the teacher's conduct had been such that sufficient cause existed for his dismissal. The action in which he had engaged in the classroom was unrelated to his duties as a mathematics teacher. Students' time and attention had been diverted from their studies. The Constitution does not protect teachers' comments directed at inflaming students to violent action.
>
> In both the substantive and procedural matters, the school administrators had acted wisely and judicially (Hudgins, 1975:37).

III. FREEDOM OF SPEECH

As was discussed above, what a teacher says in the classroom can certainly be an area of teacher and principal conflict. However, what a teacher says outside the classroom, whether it is away from school or in the teachers lounge, can also put the principal and the teacher into legal litigation.

Chanin (1970) reports that one of the most important cases dealing with freedom of speech for teachers was heard in Illinois in 1967. The case was Pickering v. Board of Education.[10] Pickering was a public school teacher who had sent a letter to the editor of a local newspaper criticizing the administration of the school. The letter was published and Pickering was dismissed from employment. Pickering took the matter to court, contending that his rights under the First and Fourteenth Amendments had been violated. After hearing the case and realizing that Pickering's criticisms of the administration were essentially true, he ordered the school to reinstate Pickering (Chanin, 1970:5-6). In concluding that the letter was a lawful exercise of Pickering's right of free speech, the Court stated:

> To the extent that the Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in numerous prior decisions of this Court.

Chanin (1970) stated the Supreme Court made it clear that "where the statements at issue are true or substantially so, a school board can circumscribe a teacher's right to publicize his views only if it is able to show a compelling need for confidentiality". Chanin (1970) further stated that "the court thus applied the libel standard first announced in New York Times Company v. Sullivan[11] based upon the public interest in having free and unhindered debate on matters of public importance."

The Supreme Court's statement of the problem in Pickering is particularly pertinent:

> The problem in any case is to arrive at a balance between the interest of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.

Chanin (1970) concluded his comments on freedom of speech by stating:

> Furthermore, even where a teacher's statements are so clearly without foundation as to raise questions regarding his fitness to perform his classroom duties, the statements can be used only as evidence of the teacher's general competence, or lack thereof; they cannot serve as an independent basis for discipline (Chanin, 1970:5-6).

Employees have a duty to obey the rules and regulations of the school provided, of course, that the rules are not unlawful or constitutionally impermissible. Similarly, teachers must conform to the legitimate

requests made of them by the building principal. Many times during the interaction between a principal and a teacher over an issue that is in conflict, too much may be said.

Walden (1974:2) stated that "What a teacher may describe as exercising his right to freedom of speech might be characterized by the principal as verbal abuse." When principals work as closely as they do with teachers, insubordination can become the basis of a law suit. Even though the First Amendment provided for freedom of speech for all citizens, it does not provide protection for personal attacks (Walden, 1974:?).

Walden (1974) further stated that "Usually a series of incidents, described as insubordinate, are required to sustain a case against a teacher. Amburgey v. Cassady[12] illustrates this kind of case."

Amburgey was a high school librarian who was not rehired for the next school year. She took her case to court saying that her First and Fourteenth Amendment guarantees had been violated. Amburgey had been an outspoken opponent of the superintendent and had actively opposed some members of the board.

After analyzing the facts surrounding the case, the court found Amburgey guilty of several insubordinate acts:

1. She was openly critical of the principal
2. She had confrontations with other teachers
3. She had pushed the superintendent in public

The court upheld the board's action in dismissing Amburgey, pointing out that her actions were disruptive in nature. The court stated that:

> It is clear, then, that there are limitations to an employee's right to criticize his employers. The limitations are not narrow, and the administrator cannot be overly sensitive to adverse comments. On the other hand, he is not required to be the target of verbal abuse that impugns his character and disrupts the educational process (Walden, 1974:72).

Fischer and Schimmel (1973) discussed another aspect of freedom of speech in the case of Watts v. Seward School Board.[13] In this case two teachers made charges against the school administration and board members by publishing an open letter to them. The letter was an obvious attempt to turn the public against the school officials. The teachers were fired and took the case to court, eventually reaching the Supreme Court of Alaska in 1969. The court upheld the dismissal for the following reasons:

1. The teachers had openly criticised their immediate supervisor.
2. The statements were not true.
3. The letter caused much controversy within the community.
4. The false accusations were made disregarding all rules of play (Fischer and Schimmel, 1973:23).

Chanin (1970) commenting on the case of Donovan v. Mobley[14] heard in California in 1968 reported that the circulation of a petition to make school administrators and legislators more aware of definite needs at the school was constitutional. The court stated that this particular action involved far more than "public inconvenience, annoyance, or unrest" (Chanin, 1970:7).

Delon, writing in 1972, stated that a teacher does not have to be meek in criticising the school system. He cited Puentes v. Board of Education of Union Free School District of Bethpage[15]. In this case a teacher was fired for making critical remarks in a letter concerning the school when a probationary teacher's contract was not renewed.

Though the letter, "contained some factual inaccuracies, yet the court held that the communication had no deletorious effects within the school system and was insufficient to sanction disciplinary action" (Delon, 1972:34).

Delon (1972) stated that the courts also ruled against a teacher in Ahern v. Board of Education of Grandview.[16] The teacher had been warned by school administration concerning her teaching style and outspokenness. The teacher was dismissed for cursing the actions of a substitute teacher and encouraged her students to leave class if anything like that happened again. Further, she encouraged her students to develop a proposal to modify the school's regulations on corporal punishment. Delon (1972:35) reported the courts comments on the case:

> I am persuaded that the exercising of a constitutional right was not the reason for the discharge. Although a teacher has a right to express opinions and concerns, as does any other citizen on matters of public concern, by virtue of the First and Fourteenth Amendments, . . . I doubt that she has the right to express them during class in deliberate violation of a superior's admonition not to do so, when the subject of her opinions and concerns is directly related to student and teacher discipline (Delon, 1972:35).

IV PERSONAL APPEARANCE

During the last few years, the accepted mode of dress in society has changed drastically. With this change the building principal has been faced with not only enforcing studetn dress codes, but teacher dress as well.

Gatti and Gatti(1972:78) reported on the case of Finot v. Pasadena City Board of Education[17]. A classroom teacher was transferred to a position of home teaching for refusing to shave his beard. The court

ruled in his favor stating that: "(T)he wearing of a beard is a form of expression of an individual's personality."

Bolmeir (1971),commenting on the Finot case indicated that even though the school principal testified that the teacher's wearing of a beard would have an effect on student dress at school the teacher still won the case.

The court of Appeals concluded as follows:

> This is not to say that all male teachers at all high schools, regardless of circumstances, may wear beards while they teach in classrooms and that the practice may not be prohibited or otherwise restrained under appropriate circumstances. What we hold is simply that, on the record before us, with the complete absence of any actual experience at the high school involved as to what the actual adverse effect of the wearing of a beard by a male teacher would be upon conduct of the educational processes there, beards as such, on male teachers, without regard to their general appearance, their neatness and their cleanliness, cannot constitutionally be banned from the classroom and from the campus.

Bolmeir further commented on the issue concerning personal appearance of teachers. Reviewing a 1969 case, Blanchet v. Vermillon Parish School Board[18]. The teacher refused to wear a necktie to class and was suspended. The teacher contended that the school regulation was not in any way related to the educational process and that his constitutional rights had been violated. The school board held that wearing a necktie made teachers look more professional and directly affected the respect that the community and students might have for him (Bolmeier, 1971:31-33).

The court made its point in the following comments in upholding the board decision:

> In view of some of the most recent federal announcements, the constitutional issue is not free from doubt. We nevertheless believe that, for the reasons stated earlier, the school board's necktie regulation may be held valid as not unreasonably restricting the personal liberty of the teacher-employee to dress as he wills. There is sufficient showing that the regulation may be of value in the administration of public education, so that we do not find it to be an arbitrary or unreasonable restriction on personal freedom in the light of the educational purposes served thereby.

Chanin (1970:15) advanced the court holdings for constitutional rights of personal appearance for teachers by reporting the case of Braxton v. Board of Public Instruction of Duval County, Florida[19]. The court held that a Negro teacher could not be constitutionally dismissed for not shaving off his goatee. The court stated that the schools demand for removing the goatee was "arbitrary, unreasonable, and based on personal preference."

In a similar situation. which has been legally termed In the Matter of John Collins[20], a non-tenured teacher was ordered reinstated to his former position after he had been suspended for refusing to trim his hair and moustache to meet the school's specifications (Chanin, 1970:15). The court said that regulations such as these "plainly offended both substantive due process and equal protection guaranteed by the Fourteenth Amendment" ("The Law and Teachers" 1973:55-56).

Delon (1972) provided further insight in the area of personal appearance of teachers by commenting on Lucia v. Duggan[21]. A federal court ordered a teacher reinstated for refusing to remove a beard he had grown. The case didn't involve the constitutional right of growing a beard, but was tried on procedural grounds. A written

school policty stating that facial hair was in viclation of established regulations did not exist.

Delon further noted in Ramsey v. Hopkins[22] that a building principal cannot make a rule against teachers wearing moustaches. The court noted that "personal tastes of administrative officials is [sic] not a permissible base upon which to base rules for the organization of public institutions" (Delon, 1972:36-37).

V. STUDENT DISCIPLINE

The area of classroom discipline has been the cause of much teacher/principal confrontation. When a teacher is too lax in classroom discipline, many problems occur. However, when the student discipline is too severe, problems of a different nature arise that many times are settled in the courts.

In the past, teachers have disciplined students and managed their classes under the concept of In Loco Parintis. Parents sent their children to school relatively familiar with this concept. The discipline standard that most courts went by was a test of "reasonableness." Was the punishment equal to the offense? In disagreement as to what was "reasonable" to the parent and "reasonable" to the teacher, many cases have been heard in court.

Nolte (1969), commenting on student discipline, reports that all but one of the fifty states have provisions that permit corporal punishment. However, many local school boards have chosen not to use this form of discipline. Nolte further states that "in the absence of state statutes the teacher may administer corporal punishment, so

long as it meets the following legal standards":

1. The teacher is not motivated by malice or anger;
2. Corporal punishment is not prohibited by the board of education;
3. The punishment is reasonable;
4. The punishment is related to the age, sex, size, and physical condition of the child;
5. The punishment leaves no permanent effects;
6. The punishment is conducive to the welfare of the child, and bears a reasonable reasonable relationship to some prior action; and
7. The punishment is not performed to enforce an unreasonable rule (nolte, 1968:85-86).

As long as the staff is familiar with and follows the above standards, the building principal can feel reasonably sure that student discipline administered by himself or one of his teachers will not result in a law suit.

In light of recent court rulings on the legal status of students, future constitutional interpretation of corporal punishment may find that it can not be permitted in the schools. Further, the erosion of the concept of In Loco Parentis may influence the courts in future cases to be less receptive to this concept (Today's Education, 1972).

Additional comment on the concept of in Loco Parentis was made by Strahan (1972) citing a 1968 case, Moore v. Troy State University[23], the court declared "that this doctrine was an insufficient basis for discussion of the legal relationship between a state agency and a student."

The final case to be considered in this handbook concerning student discipline will be from a Federal Court of Appeals case, Ingraham v. Wright.[24] Mathews (1975:4) states that this case reaffirmed the use of corporal punishment to maintain discipline in the schools.

Mathews further states that:

> In considering the question of whether corporal punishment is on its face constitutional, the court examined two theories: first, whether such discipline in itself violates the 8th Amendment regarding cruel and unusual punishment, and, second, whether it violates due process as being arbitrary, capricious, and unrelated to the achievement of any legitimate educational purpose. As to the first theory, the court found that, considering the mild or moderate use of corporal punishment and its widespread acceptance across the nation, such punishment would not as of this time be considered cruel or unusual. The court did, however, recognize that the particular circumstances must be considered, rather than relying on a broad, general rule. As to the due process theory, the court stated that the mild or moderate use of corporal punishment did not appear to be unrelated to any legitimate educational purpose; however, the court did indicate a willingness to hear evidence as to its utility (or the lack thereof). Although the court did espouse what appears to be a reasonable attitude in this area, it made clear that teachers and administrators may be held personally liable, for the court held that under the facts in this case the pattern of severe corporal punishment, exhibiting a "shocking disparity" between the offense committed and the harsh punishment imposed, violated both the 8th Amendment prohibition and the due process limitations, and that it was thus error for the lower court to dismiss the cases against the school administration and the teacher (Mathews, 1975:4).

VI. FREEDOM OF ASSOCIATION

When a person becomes a teacher and is employed by a school district, certain modes of behavior have been expected. Usually a school district would like for a teacher to lead an exemplary life, belong to professional organizations, and have the "right" kinds of friends.

Gatti (1972) stated that under the protection of the First Amendment, teachers have the right to associate with whomever they please. One area of contention has been in the area of politics. In the past, teachers who engaged in political activities were not only frowned upon, but actually forbidden to participate by state statutes. Today, however, these kinds of legal restrictions have been removed in most

instances. A teacher's involvement in political activity, when this activity does not interfere with the teachers' classroom performance, is permissable in the eyes of most court decisions. On the other hand, the courts are not as definite in their opinions concerning partisan political activity.

Gatti further commented that a standard which future decisions will probably follow is Watts v. Seward School Board. Gatti stated: "Political activity which materially and substantially interferes with the efficiency and discipline in the operation of the school may properly be restricted; but absent such interference, your right to participate in political activities may not be restricted." (Gatti and Gatti, 1972:82-84)

Bolmeier (1971) says that "many court cases dealing with the teachers' right of association have developed most specifically because of non-compliance with oath requirements."

To illustrate this point, Gatti (1972) discussed the case of Keyishian v. New York. Three teachers at the State University of New York refused to sign an oath that stated that they were not communists. They were dismissed from their positions and Harry Keyishian took the case to court. Keyishian won the case. Gatti concluded that:

> Mere membership in a subversive organization is not enough to justify dismissal or other non-criminal sanctions. You must be shown to have the intent to bring about the illegal objectives of the organization.

In support of Keyishian concerning freedom of association Gatti reported on Elfenbrandt v. Russell.[25] In this decision the Supreme Court said:

> Those who join an organization but do not share its unlawful purposes and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. Laws such as this which are not restricted in scope to those who join with the "specific intent" to further illegal action impose, in effect, a conclusive presumption that the member shares the unlawful aims of the organization.

"This is not to say that all loyalty oaths are invalid. Teachers should be willing to sign an oath that they do not have the specific intent to aid in an unlawful attempt to overthrow the government of the United States." (Gatti and Gatti; 1972:82-84)

Delon (1972) reports that teaching certificates have been revoked in the past for swearing to a state loyalty oath while being members of the Communist Party. A case is point was McKay v. Rafferty.[26] In the decision the court ruled that the California loyalty oath requirement for certification was unconstitutional.

> The weight of evidence now indicates that membership in political organization per se is not a permissible ground for disqualifying applications for the profession or for revoking their certificate or license to teach. The state probably may go no further than to require that the teacher be willing to affirm a general commitment to uphold the Constitution and to perform the duties of his position (Delon, 1972:23-24).

VII. TEACHER NEGOTIATIONS

The process of negotiating with teachers is gaining impetus across the United States. The building principal needs to become more aware of the importance of this facet of education. Few principals are actually involved in the negotiating process, but much of what is proposed for negotiation by teachers involves the relationship between principals and teachers. The everyday contact between the building principal and teachers makes the principal one who should be involved in developing a

framework of rules under which both would work. One facet of this framework would be to develop a formal grievance procedure that could possibly solve problems before they become an issue to negotiate. Kramer (1969) recommended certain guidelines for the approach to grievance cases. They are as follows:

1. Grievances hould be presented in writing.
2. An association committee should screen grievances.
3. The principal should have his witnesses.
4. Reprisals from participation in grievance cases should be forbidden.
5. All parties should be allowed to file grievances.
6. Grievance procedure should not be conducted on school time.
7. A statute of limitations should be specified (Kramer, 1969: 11-16).

Kramer further outlined some guidelines for the building principal in resolving formal grievances.

They include:

1. Take time to decide.
2. Avoud unncessary written explanations.
3. Consistency and impartiality are essential.
4. Firm decisions require a long-range view.
5. Principals must be able to document teacher ratings.
6. Continuous communication between central office and principal is crucial.
7. Permanent records should be kept. (Kramer, 1969:16-21).

The principal is the immediate administrative fiture involved in practically everything a teacher does. From supervision to the enforcement of school policy, the principal heavily influences the climate of

the school. Because of the nature of his position, the principal needs to understand the process of teacher negotiations.

Strahan (1973) stated that usually a teachers' organization will submit a proposal or group of proposals before a board for negotiation. He refered to N.L.R.B. v. Wooster Division of Borg-Warner Cop.[27] as a case which established some categories of proposals that might be submitted to an employer.

In this case the U.S. Supreme Court recognized the following three categories:

1. Those that are illegal and therefore cannot be bargained about.
2. Those that may be bargained about if the parties voluntarily wish to do so.
3. Those that are mandatory and must be bargained about.

"These positions would not necessarily be binding upon a school board, in that they are an interpretation of the National Labor Relations Act, but many of the guildelines used in the negotiations process have been drawn from the private sector's experience." (Strahan 1973: 140-144).

Bolmeier (1971:101) commenting on teacher negotiations, said that in the legislative and judiciary branches, there has been a trend to support the negotiating process on matters that would otherwise be taken to court. A case in Wisconsin, Joint School District v. Wisconsin Employment Relations Board[28] involved sitration where the teachers wanted to negotiate the "school calendar." The board refused to do so stating that this was a matter of policy making. However, the court said that it may be a negotiable matter since the calendar was a matter of concern to all (Bolmeier, 1971: 102).

If grievance procedures are not effective, then negotiations will probably be the alternative. The question has been asked "With whom should the principal attempt to negotiate?" This section of the handbook attempts to provide an answer.

Addelston (1969) writes that the principal should be vitally concerned with negotiations in four major areas. As outlined below "in each case, the negotiations have resulted in an erosion of the principal's authority without any corresponding decrease in responsibility."

The four major areas of negotiations are:

1. Negotiations with pupils and/or their parents as representatives of those pupils concerning what we might call the working conditions of the pupils;

2. Negotiations with the community or the so-called and sometimes self-styled community representatives;

3. Negotiations with teachers and other staff members, e.g., para-professionals;

4. Negotiations with the supervisory staff including the principal himself and his superintendent (Addelston, 1969: 298).

Now that the courts have affirmed the right of teachers to negotiate, where does the building principal fit in the negotiation process? Ian Templeton (1972), commenting on the principals role in negotiations, states:

> The introduction of direct teacher-school board collective negotiation has confused the role of the principal in the negotiation process. Previously the chief representative of both the board and the teachers, the principal has become an optional participant in the new negotiations.
>
> Often bypassed by superintendents and boards, as well as by teachers, principals had to choose (where legislative statutes permitted) to join either the teacher or the superintendent-board team. Although some principals prefer to define themselves as "instructional leaders" and include themselves with teachers, more often they are covered in the definition of management borrowed from labor bargaining.
>
> The trend in the current literature is to accept the principal as a part of management and to view him in an active role on a management team (Templeton, 1972:5).

In the past, the building principal has been considered the "educational leader" and the individual held solely responsible for the development and maintenance of a good school. The principal is in a unique position in the negotiating process. Hired by the superintendent and board, the principal has definite duties and responsibilities to them. On the other hand, the building principal works closely with the teachers on a daily basis. If utilized properly by both groups, the building principal could aid in the negotiating process in a very positive manner through the process of communications from the negotiating groups.

VIII. PERSONAL FREEDOM

A teacher's conduct away from the school can cause a principal many problems and can result in a lawsuit. Immorality is a common charge against teachers during off-duty hours. Exactly what is considered "immoral" will vary from one community to another. What is acceptable in one community may be grounds for dismissal in another. The building principal should inform new teachers coming into the system the mode of behavior that is normally acceptable to this particular community. In very large school systems this may not be as crucial as in smaller systems.

Fischer and Schimmel (1973:59) discussed the case of Watson v. State Board of Education[29], in which an individual was applying for a teachers certificate in California and was denied because of a lengthy police record of being drunk in public. Watson contended that this didn't affect his ability to teach. The court disagreed and ruled against Watson, stating in part that:

> He could not have "the proper concerned attitude necessary for successfully counseling and directing young students away

> from the harmful effects of alcohol". . .Being arrested as a "public drunk" as for driving under influence of alcohol did not create in Watson "the example young people at an impressionable age need". . . Watson's apparent disregard for law and order was a serious concern. The court emphasized that an important part of education is the teaching "by example as well as precept of obedience to properly constituted authority." By contrast, . . ."I don't know," said the trial judge, "what better evidence there could be of immorality than a series of criminal convictions" (Fischer and Schimmel, 1973:59).

Rubin (1972:111) in discussing the personal freedom of teachers referred to a Texas case, Caddell v. Johnson.[30] In this case a high school basketball coach took a waitress for a drive after a basketball game. Around midnight they were found parked on a country road. The coach was dismissed for his behavior. He took the case to court and won. The court stated:

> School districts may examine the conduct of teachers both in and out of the classroom. . . Nevertheless, before a teacher can possibly be discharged for personal conduct, the court feels that a showing must be made that such conduct had a direct effect on the teacher's success in performing classroom duties. There was no evidence in this case that [the teacher's] relationship with Mrs. Bumpass interfered with his teaching duties in any way. Without this showing the discharge is impermissible (Rubin, 1973:112).

Since sexual misconduct is totally impermissible by most community standards, this section of the handbook will review some of the writings by various authors as they discuss cases that deal with personal freedom of teachers and instances of sexual misconduct.

Delon (1972:22-23) commented on Morrison v. State Board of Education[31], a case heard in California in 1969. Morrison was a teacher and a practicing homosexual. He reported this fact to the superintendent of schools and resigned his position. Approximately three years later the state revoked his license. Morrison took the case to court and won.

In ruling that this particular teacher's certificate must be re-

> stored the court evidently anticipated misinterpretation of its decision. The judge explained: "We do not, of course, hold that homosexuals must be permitted to teach in the public schools of California. We require only that the board find that the individual is not fit to teach." (Delon, 1972:22-23).

Hudgins (1974) in discussing homosexual behavior of teachers made reference to Burton v. Cascade School District High School.[32] In this case a teacher confessed that she was a homosexual, but that she had never approached any of her students or let it affect her work in any way. She was dismissed on the grounds of immorality as outlined by state statutes. Burton took the case to court and won. The court said:

> The definition of immorality depends on the idiosyncracies of individual school board members. It [immorality] may be applied so broadly that every teacher in the state could be subject to discipline. The potential for arbitrary and discriminatory enforcement is inherent in such a statute.

Another case Hudgins discussed was Acantora v. Board of Education of Montgomery County[33]. In this case a teacher was identified as being a homosexual and was reassigned to a non-teaching position. The teacher took the issue to court. In presenting his case to the public, the teacher used mass media to express his views on homosexuality. A U.S. District Court upheld the actions of the school administration only because of the teacher's "repeated and unnecessary appearances on local and national news media."

Just as strongly the judge stated that:

> " Mere knowledge that a teacher is homosexual is not sufficient to justify transfer or dismissal of the teacher, since that reason would be unconstitutional."

Hudgins (1974:41) concluded by asking this question: "When, then can a homosexual teacher be fired? With greater openness about sex these days, this question is important, and the answer appears to depend

in turn on two other questions."

> 1. Has the teacher lost the ability to discipline children, i.e. Is there a loss of respect which leads to a breakdown in discipline?
> 2. Has the teacher's behavior resulted in a noticeable breakdown of the effectiveness of the educational program?

"If neither element is present, administrators may find it difficult to win court sanction for removing the teacher" (Hudgins, 1974:40-43).

In another issue of personal freedom for teachers the use of illegal drugs was reviewed. Hudgins (1974) made reference to two cases joined for a decision in California's Court of Appeals. The case at issue was Comings v. State Board of Education[34]. Hudgins commented that:

> Both (cases) involved possession of marijuana by a teacher off school ground. Interestingly, one appeal was upheld, the other denied. In the first case, the teacher was charged by the state board of education with "acts involving immoral and unprofessional conduct, unfitness for service, and moral turpitude." At a hearing there was no dispute over evidence, and the board recommended revocation of the teacher's license. The teacher brought action in superior court, lost the verdict, but won a reversal in a court of appeals. Crucial to this case, said an appellate court judge, was that the teacher had remained an instructor for a year following his conviction and there was no showing that the incident had adversely affected students or teachers. Compare these facts with the second case, where a teacher was arrested for possession of marijuana while on summer vacation. While the charges by the superintendent were about the same as those brought in the first case, the hearing took a different slant. Specifically, a vice-principal of the school testified that the teacher's return would adversely affect school operations and personnel, and stated that the school's drug education program might be undermined. She cited calls from concerned parents, students and teachers and pictured the teacher's return as being at odds with the total educational program.. The appellate court accepted the vice-principal's conclusions as valid, and commented that there was considerable evidence to believe the teacher unfit to teach. Administrators might take not of the difference in court judgements between teacher possession of marijuana (and other drugs) and student possession of the same substances. In general, the rights of students have been held to be secondary to the more crucial problem: the dangerous influence of narcotics (Hudgins, 1974: 40-43).

There is a great range of social troubles in which teachers can become involved. A principal must first ask--has this action caused the teacher to be ineffective in the classroom? If the answer is no or you are not sure, careful investigation is prudent to determine if the situation merits removal.

IX. DUE PROCESS

Principals of schools must become familiar with the concept of due process and abide by it. One are of conflict over due process is in teacher evaluation. Under due process, all teachers must be treated and evaluated in the same manner. In recent years, the building principal could keep close records on a certain teacher that he felt should be dismissed and at the end of the year have a basis for not renewing the contract. Presently, if the same type of records are not kept on all teachers, principals' claim for dismissal would be invalidated.

Every teacher is entitled to an evaluation of their teaching skills. If these skills do not meet with the approval of the principal or supervisor, specific recommendations must be made that would eliminate the deficiency and a follow-up evaluation should be planned at a later date. The principal and/or supervisor should work with the teacher in question to try to improve the inadequate teaching skills. After the second evaluation, another conference should be held to again discuss and agree on skills that still need to be improved or to note any improvements accomplished. Formal notice of intent not to re-employ with specific reasons should be given well in advance of the contract renewal date.

If the contract is not renewed, the teacher may request a hearing on the matter, but in most instances this is all the action that is taken.

Using Roth v. Board of Regents[35] as reference, Rubin (1972:152) states that substantive constitutional protection for a teacher may well be "useless without procedural safeguards." Although, as was noted, a teacher "possessed of extraordinary fortitude" may elect to retain counsel and file suit, litigation entails many practical difficulties. A quote taken from The Rights of Teachers states that:

> Faculty members are not litigious by nature, the costs of formal controversy are high and usually must be borne personally, the burden of proof--often exceedingly difficult to carry--falls upon the plaintiff-teacher, and the ordinary case may not reach judgement for months or even years after the plaintiff has been separated from his job. In addition, the teacher must face the practical recognition that the extralegal hazards of such litigation are themselves quite great: to sue and to lose establishes a public record against oneself as a teacher and may further prejudice one's chances for employment or advancement. To sue and to win will not permit one actually to resume teaching at the institution in most instances, and it will almost certainly spread upon the public record whatever evidence of the plaintiff's shortcomings the defending institution can muster--thereby warning other institutions which may be chary of seemingly irascible professors who sue their employer and "launder their linen" in public places.

Rubin (1972) further commenting on Board of Regents vs. Roth and Perry vs. Sindermann[36] stated "the Supreme Court ruled that if termination would deprive the teacher of liberty or property, he is entitled to a hearing."

> In Roth, the Supreme Court recognized that a teacher dismissed during the term of his contract has a property interest safeguarded by due process. Thus, any teacher--including a nontenured teacher-- facing dismissal during his contract term would be entitled to a hearing under the Constitution. The court rejected the contention, however, that every nontenured teacher facing nonrenewal of his contract is entitled to such a hearing. Rather, the Court held, a hearing is constitutionally required in such circumstances only where the nonrenewal implicated interests in

"liberty" or "property". In Sindermann, the Court held that proof of a property interest in continued employment "would obligate college officials to grant a hearing at his request, where he could be informed of the grounds for his nonretention and challenge their sufficiency." In neither Sindermann nor Roth, however, did the Court shed much light on the nature of the hearing that would be required to permit a teacher adequately to challenge the sufficiency of the reasons for nonretention, except that in Roth the Court suggested that a "full. . . [as well as a prior] hearing" is necessary.

Rubin concluded that in Roth, the Court made frequent reference to its prior decision in Goldberg vs. Kelly[37], where it formulated the following minimum procedural safeguards necessary to afford a fair hearing:

1. the opportunity to be heard "'at a meaningful time and in a meaningful manner'";
2. "timely and adequate notice detainling the reasons for a proposed termination";
3. the opportunity to confront and cross-examine witnesses;
4. the opportunity to present arguments and evidence orally, as well as in writing;
5. the right to retain an attorney;
6. a determination resting "soley on the legal rules and evidence adduced at the hearing"'
7. a statement by the decision maker of the reasons for the determination and of the evidence relied on; and
8. an impartial decision maker.

Another area of dueprocess currently receiving much attention is in regard to the pregnant teacher and her constitutional rights. If a teacher becomes pregnant, a building principal may want to become familiar with Hutchinson v. Lake Oswego School District No. 7[38] which speaks to due process and the expectant teacher. Required maternity leave provisions are void and most regulations concerning maternity are unconstitutional as outlined in Cleveland v. LaFleur[39] and Cohen v. Chesterfield County School Board.[40] In an article published in the OSSC Report, Daniel Scott analyzed the Hutchinson case. In Hutchinson,

he stated that:

> ". . . refusal to grant a teacher the use of her accrued sick leave for her pregnancy-related disability was an invidious discrimination on the basis of sex in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution." Furthermore, teh court also held that such discrimination constitued an Unfair Labor Practice under Title VII of the Civil Rights Act of 1964 (OSSC REport, 1974: 27:28).

Gatti further stated that "in the past, a distinction was made between childbirth-caused disabilities and all other medical disabilities. Such a distinction is now considered arbitrary and will not be upheld by the courts."

The court said:

> "Sick leave is to compensate teachers for the wage loss they sustain by being unable to work because of illness or injury . . . The economic hardship pregnant women suffer when they cannot work is identical to the hardship of other disabled workers . . ." (OSSC Report, 1974:27-28).

In the light of these cases concerning the pregnant teacher, a building principal should make an effort to re-employ the disabled teacher following childbirth. Further, any school policies stipulating specific requirements of pregnant teachers should be revised to conform to federal laws.

In conclusion, the concept of due process must be followed by the building principal. It is clear that teachers have definite rights at school and due process must be afforded them by law.

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THE PRINCIPAL AND STUDENT RIGHTS

I. The Principal and the Student

During the last twenty to thirty years, federal and state courts have exercised increasing influence on public school policy making. Many court decisions since 1950 have had a tremendous effect on national institutions such as family, church, social, professional, and personal relations. Partly due to these court decisions, culture and philosophies have had to adjust to an ever-increasing rate of change and transition. Many people feel that the courts, by pre-emption, have taken the policy-making duties away from local authorities in many important issues (Hazard, 1974:259).

The educational journals contain many articles relating to the effect of court decisions that effect the building principal in the administration of the public schools. Even when laws remain unchanged, interpretations of them and their applications often vary from one area to another. In a federal system, such as found in the United States, there is a problem of differences between state and federal laws and the applicability of each. In particular, the application of law by the courts has changed the role of school officils in policy making. School board decisions are becoming increasingly open to challenges from the public, courts, staff, and student body. Legal help, such as from the American Civil Liberties Union, is available to defend individual rights that are in conflict with schools policies that once were considered as law, and thus

unquestioned by students and their parents. As a result many educational policies are the result of court decisions and case-law interpretation (Hazard, 1974:259).

Modern American society seems to be characterized by a continuing conflict between individuals and the institutions that society has given the right to formulate regulations and govern. This attitude is manifested in the challenge of traditional rules and regulations governing the students that attend public schools. An example of this attitude is how some students visualize a dichotomy in the laws governing compulsory attendance and the laws and regulations that infringe upon an individual's rights while in school. Because of this and other situations, there has been an increase in the number of cases reaching the state and federal courts in recent years. The majority of the decisions have upheld the policies of the schools, but an increasing number of courts have upheld the student in his challenge (La Mrote, 1971:3).

This section of the handbook, is concerned with school's authority for control of student behavior. There are many controversial issues in this area, some of which are: student dress and personal appearance, student conduct at and away from school, locker searches, freedom of speech and press, due process, freedom to join secret societies, etc.

It is felt that many school policies and regulations that govern student and teacher behavior were arbitrarily drafted and have little relationship to valid educational objectives. Benton

(1971) felt that many of these regulations were still in force because they had not been questioned by the legal forces.

II. DUE PROCESS

One of the most important areas of concern to the building principal is that of due process to the student. In the past, administrators have felt that on those rare occasions when the courts did accept a case involving student charges of unfair treatment, school authorities were generally upheld.

A change in this philosophy first gained Supreme Court sanction in the Gault[1] decision of 1967. This case challenged a legal procedure by which an Arizona youth could be declared a "deliquent child." The Arizona law, like those in many other states, was bssed on the legal concept of "in loco parentis". In striking down the juvenile procedures of the State of Arizona, the Supreme Court held that the constitutional guarantees of "due process" did apply to students, because of the procedures deprive the child of his civil liberty. In the words of the Court: ". Whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."

In Gault the Court had opened up the entire question of constitutional rights of juveniles and a school came in a challenge to the suspension procedures of the New York public schools in Madera v. Board of Education of the City of New York[2]. The plaintiff, a suspended student, had sought injunctive relief from a

Board of Education regulation which had denied him representation by counsel at a guidance conference conducted by the district superintendent. Board Policy established a procedure whereby students suspended for disciplinary reasons and their parents attended a conference with the guidance counselor, the school-court coordinator, the principal, and the district superintendent. The regulation specifically prohibited representation by counsel for the student. There were three possible outcomes of this conference: 1) The suspended child might be reinstated in the same school, in the same or different class; 2) he might be transferred to another school of the same level; or 3) he might be transferred to a special school for socially maladjusted children, but only with the parents' consent.

In denying the injunction and upholding the board regulation, the Court relied heavily on the intent and outcome of the guidance conference. The Court felt that the single purpose of the conference was to study the facts and circumstances surrounding the temporary suspension of the student by his principal, and to place the child in a more productive educational setting. The Court held that these were nonadversary hearings of an educational nature and that the results would not effectively deprive the student of life, liberty, or property.

The next due process case of significance for students is the landmark decision in Tinker v. Des Moines Independent Community School District.[3] This decision dealt with the suspension of five

Des Moines, Iowa students from their respective schools for wearing black armbands to school in violation of district administrative policy. The Court addressed itself directly to the student rights question. To quote the most popular phrase of the Court:

> First Amendment rights, applied in light of the special characteristic of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the school-house gate.

Many educators feel that in this statement the supreme Court guaranteed all constitutional rights to students and teachers in the public schools. However, by including the phrase, "in light of the special characteristics of the school environment," it would seem that civil rights in the schools may be considered in a different perspective that those rights guaranteed the larger society.

The U. S. Supreme Court in 1974 heard Goss v. Lopez and unaimously agreed with a suspended student's claim that suspension without "due process" safeguards of notice and prior hearing is in violation of the Fourteenth Amendment of the Constitution of the United States. The lack of due process procedures would deny a student an education. Hudgins (1975) commenting on Goss v. Lopez stated that :

> Due process is a flexible rather than a rigid concept. In application it is the nature rather than the weight of it that is significant. In terms of applying it to the instant case, the Court viewed a ten-day suspension as not being minimum action. Some kind of notice and some kind hearing are required for suspensions of less than ten days.

> The hearing can immediately follow the notice; both should precede suspension.
>
> For some kinds of disciplinary infractions, the Court held that suspension may precede a hearing. If the presence of the student is a danger to persons or property or is a threat to the academic process, the student can be removed from school prior to a hearing. The hearing should then be conducted as soon as practicable.
>
> The Court held that t e following are not requirements for short-term suspensions: counsel, confronting witnesses, cross-examining witnesses, and calling one's own witnesses.
>
> The Court observed that more formalized procedures may be needed for exclusions of longer than ten days, although the justices did not spell out what those requirements might be (Hudgins, 1975:65).

The Court further pointed out that school administrators may adopt regulations providing for reasonable suspension procedures which are in keeping with the educational goals of their schools and are reflective of the characteristics of their school and locality. The choice of a procedure for a particular school system should be left to the school officials that have been charged with the administration of that school system.

Finally, in the discussion of Goss v. Lopez, the Court noted that "Due Process" is not an inflexible rule imposed by the Courts upon administrators. The minimum requirements of notice and a hearing prior to suspension except in emergency situations, does not require rigid procedures. Due process is satisfied if the procedures are "reasonably calculated to be fair to the student and to lead to a reliable determination of the factual issues involved." The court said:

> ...If school administrators follow procedures which result in a fair factual determination made after notice and an opportunity to defend against the charges of misconduct, then no

> matter how informal the procedure, the student has been accorded the minimum requirements of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

After studying the concepts of "due process" that have been outlined by the courts, principals might find two basic guidelines that Richard Ritchie (1973) stated as being helpful. He said that:

> First, most policies and procedures for handling student-school conflicts should be nonadversary in nature and design. The purpose, intent, and function of procedures (guidance conferences, parent-teacher conferences, parent-principal conferences, school-home conferences, etc.) must be for the educational benefit of the student. The scope and authority of such meetings must be to improve the functioning of the student in the school environment.
>
> Second, in procedures dealing with serious student-school conflicts--which might result in the suspension or expulsion of the student--the basic principle of due process should be applied. This procedural due process should not be patterned after criminal requirements but should be based on the concept of fairness to the student. Fairness, after all, is the basic intent of due process. It must be agreed that when a student is faced with the possibility of losing the privilege of attending school he is at least entitled to the following procedures: 1) to have prior knowledge of the conduct that is required or prohibited, 2) prior notification of specific matters giving rise to any proposed penalty, 3) an opportunity to be heard regarding such charges, and 4) a fair decision based on the charges made (Ritchie, 1973).

III. INSIGNIA, EMBLEMS AND POLITICAL RIGHTS

One area of student rights that building principals must give more attention is that of the students' political rights. This section of the handbook will report on school policies and regulations against insignia and/or emblems, that students may obtain or possess.

The basic position regarding students' political rights in the public schools was undertaken first by a panel of the United States Court of Appeals for the Fifth Circuit in 1966. Two decisions were announced on the same day with the court ruling for the students in one case and for the Board of Education in the other. Both cases involved the wearing of "political" emblems by students (Reutter, 1975:8).

In Burnside v. Byars a number of students appeared at school wearing buttons with the words "One Man One Vote" around the perimeter and "SNCC" in the center. The principal of the school announced that students would not be permitted to wear such insignia at school. In justifing his actions, he felt that the buttons "didn't have any bearing on their education," "would cause commotion," and "would disturb the school program." When 30 to 40 students continued to wear the insignia, he gave the students the choice of removing the buttons or being sent home. Many chose to go home, and the principal suspended them for five days.

The court of appeals ruled against the school. The appellate court, pointed out that on former occasions students had worn "Beatle Buttons", and buttons containing the initials of students, and these had not been banned. The court held that students have the right to communicate an idea silently and to encourage the members of their community to exercise their civil rights (Reutter, 1974:8).

In Blackwell v. Issaquina County Board of Education[6] school authorities were upheld in banning insignia where the record showed a high instance of disturbance and riotous activities. The buttons were similar to those of the previous case and were worn in defiance of the school authorities. The court indicated that the issues presented on this appeal were almost identical to that in the previous case. The difference in the decision was based on the fact that in this case there was evidence of a disruption of the school atmosphere and the school authorities had a right, if not a duty, to control (Reutter, 1975:10).

The United States Supreme Court issued its first opinion involving pupil discipline, per se, in the Tinker v. Des Moines Independent Community School District ruling against the wearing of black armbands by students who were protesting the United States role in Vietnam. When the principals became aware that the students were planning to wear armbands they adopted a policy that would suspend a student if he refused to remove the armband. The suspension would stay in effect until the student returned without the armband. The Supreme Court stated that:

> . . . The wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. . . . . First Amendment rights, applied in light of the special characteristics of the school environment, are avialable to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

The Court also stated what it was not deciding:

> . . . The problem presented by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style or deportment ..... It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech." The school officials banned and sought to punish petitioners for a silent, passive, expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the school's work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the school or the rights of other students.

The Court summarized its ruling by stating that the "record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities." The Court pointed out "no disturbances or disorders on the school premises in fact occured." It also made note that the principals did not ban "the wearing of all symbols of political or controversial significance, "but only" a particular symbol--black armbands worn ot exhibit opposition to this Nation's involvement in Vietnam." Such a prohibition on "one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with school work or discipline, is not constitutionally permissible" (Reutter, 1975:11).

Insignia, emblems, and symbols have been involved in several cases related to desegration, such as Melton v. Young[7]. A Tennessee school had recently been integrated. Before integration,

the Confederate flag was used as the school flag. Racial disturbances, however, had caused the school to change its symbol. One student insisted on wearing the Confederate flag as an arm patch and was suspended. The Court of Appeals, Sixth Circuit, in upholding the suspension indicated that due to the circumstances the use of the flag was not protected by the First Amendment. The Court ruled that school officials were justified in anticipating that a disrupting racial situation would be aggravated by the student using the Confederate flag in this fashion (Reutter, 1975:16).

In a similar case in Banks v. Munice Community School,[8] the Court of Appeals, Seventh Circuit, ruled differently. The school flag resembled the Confederate flag, the name "Rebels" was used for athletic teams, and the term "Southern Belle" for the homecoming. However, the court found no connections between the offensive symbols and any discrimination, but did not consider their use in good taste.

In Augustus v. School Board of Escambia County[10] a Florida High school was brought into court because it had used the name "Rebels" as its team name and the Confederate flag as the school symbol since its opening in 1958. By 1972-73 about 8 percent of the students were black. Suit was brought against the school to rejoin the use of these symbols. The school board felt that the student body had the right to choose whatever school symbol that the majority wanted. The court ruled that the symbols were partially to blame for the racial unrest being experienced by the

school and barred their use as school symbols. The basic reason for barring the symbols was that the court felt that continued use of the symbols adversely affected the operation of the school system. Private use was barred primarily on the conclusion that use of the symbols had caused and would continue to cause disruption if individuals still used the symbols after the court had forbidden their use as school symbols. Such private use could only be viewed as "provoction to anger black students" (Reutter, 1975: p. 18).

IV. THE LEGALITY OF STUDENT CONTROL

According to Reutter (1975), the law presumes that those having authority will exercise it properly. Therefore, in dealing with claims of improper application of authority, the courts generally place the burden of proof on the person making the claim. A parent who objects to a rule or to a punishment usually has the responsibility of establishing unreasonableness by the school or the schools' appointed authority. However, the school must have some basis for its actions other than the statement that its policies and actions are in the best interests of the students of the school.

It is important to note that the more a school policy infringes upon the constitutional rights of a student the more justification school authorities must have for the policy. As the constitutionality of school policies and regulations are being challenged, courts are looking much more closely at the rationale offered by school authorities to support the challenged rules (Reutter, 1975:4).

For the test of reasonableness, a regulation of student conduct must be assessed in terms of the educational goal to be achieved and the likelihood that the rule will help achieve that goal. Reasonableness must be a testable quality and must be proveable in any and all of its applications. In considering the reasonableness of rules and regulations Edmund Reutrer felt that the following were minimum essentials of enforceable rules:

1. The rule must be publicized to students. Whether it is issued orally or in writing, school authorities must take reasonable steps to bring the rule to the attention of the students. A major exception is where the act for which a student is to be disciplined is obviously destructive of school property or disruptive of school operation.
2. The rule must have a legitimate educational purpose. The rule may affect an individual student's learning situation or the rights or other students in the educational setting.
3. The rule must have a rational relationship to the achievement of the stated educational purpose.
4. The meaning of the rule must be reasonably clear. Although a rule of student conduct need not meet the strict requirements of a criminal statute, it must not be so vague as to be almost completely subject to the interpretation of the school authority involking it.
5. The rule must be sufficiently narrow in scope so as not to encompass constitutionally protected activities along with those which constitutionally may be prescribed in the school setting.
6. If the rule infringes a fundamental constitutional right of students, a compelling interest of the school (state) in the enforcement of the rule must be shown (Reutter, 1975:6).

V. SCHOOL PUBLICATIONS

Most schools have some form of a student publication. The content of such publications can be used as a constructive or disruptive influence on the student. Since the late 1960's there have been several cases that have dealt with the power of public school

authorities to control student publications. Court action has involved both sponsored and non-sponsored publications. These publications have varied in content, scope, and intent.

In 1972, Grayned v. City of Rockford[11] settled the question as to whether authorities can control the time and place of student publications. This control is necessary for the school to maintain a proper educational atmosphere. As was stated in Shanley v. Northeast Independent School District[12], the school "is to prevent disruption and not stifle expression." Reutter, in discussing Sullivan v. Houston ISD[13] said that if those that received the publications were to act in an irresponsible manner it is they, not the writers of the publications, who should be disciplined (1975:18).

In the case of Eisner v. Stamford Board of Education[14] the court of appeals said that "It would be wise for the Board to consider and specify the areas of school property where it would be appropriate to distribute approved material." For example, a ban on the distribution of literature during a fire drill would be upheld. However, a regulation against any distribution while classes are in progress is too broad.

Most of the cases considered in this section of the handbook involved school authorities that attempted to restrict the writing, printing, or distribution of student publications on school premises. These rules and regulations which are usually enforced by the building principal are judged against the First Amendment's protection of freedom of speech and the test of reasonableness.

VI. DRESS CODES AND APPEARANCE

Court decisions relating to the appearance of students have increased in recent years. Students and parents have been challenging the right of school administrators to regulate student dress and appearance. The majority of these cases have challenged the school's right to prohibit styles of dress or appearance.

In 1921, Jones v. Day[16] faced the issue of enforcing a school board policy that required all boys attending a county agricultural high school to wear khaki uniforms on campus and in public places within five miles of the school. This regulation was upheld by the Supreme Court of Mississippi when it was applied to the students who were boarding at the school because they were actually in school or going to or from school. The board had argued that the regulation was necessary to maintain order and discipline. (Reutter, 1975:37).

The requirement of a certain mode of dress, on specific occasions in the school must meet the test of reasonableness, with the burden of proof resting on the complainant. For example, in Valentine v. Casey ISD[17] the school required the wearing of a gown at graduation. Three girls refused to wear the gown and were prohibited by the school board from participating in the ceremony and receiving their diplomas. The Supreme Court of Iowa ruled that the wearing of the cap and gown had no relation to educational values and that the diplomas must be awarded. The court emphasized however, that it was not questioning the wearing of caps and gowns, but that the board could only deny a student participation in the graduation ceremony if a cap and gown

was not worn, but could not deny the reciept of the diploma.

The determination requirements of student clothing for general safety or health reasons can be enforced. Safety considerations would certainly cover the requirement of such items as goggles for welding and helmets for football. Caps or nets on long hair in swimming pools or cooking classes would probably be justified as health measures (Reutter, 1975:37).

Beginning in 1965, appellate courts began to receive cases dealing with a school board's right to regulate the dress and appearance of students as a condition to attending school. Reutter (1975) said that there are few areas of school law in which so many cases dealing with the same topic have been handled by so many courts in such a short period of time (1975:37).

Scott v. Board of Education[18] in 1969, was the first published decision specifically dealing with the wearing of slacks at school by girls. The regulation in question prohibited the wearing of slacks by girls except if permitted by the principal because of bad weather. A female student who had been punished for wearing slacks sought an injunction against the school's enforcing the regulation concerning dress. The court ruled that the school could not enforce the specific slack rule, but did not rule against the entire dress code.

Another issue in student dress codes and appression involves the male student. According to Reutter, the number of officially reported cases by mid-1974 involving male hairstyles (on the head and/or face) in public schools reached 150. The majority of these

cases were decided in the federal courts. He found no trend in decisions for or against school boards over this period. The courts during this period accepted jurisdiction and closely studied the reasonableness of the rules. Courts that carefully study school regulations have increased and seem to be paying very close attention to regulations and their effect on the rights of the individual (1975: p.42).

The Supreme Court then cited Ferrell v. Dallas[19] and Pugsely v. Sellmyer[20] which was a 1923 decision of a dress code case by the Supreme Court of Arkansas. In both cases the decision had been against the student.

Consequently, the first hairstyle case to be decided by a United States Court of Appeals was in 1968 in Dallas, Texas in the case of Ferrell v. Dallas ISD was decided in favor of the school board by a vote of two to one. As Reutter (1975:43) reported the case, a group of high school students had formed a musical group and insisted that they were expected to maintain their dress and hairstyle to keep their contract as musicians. In upholding the school board's policy, the Court of Appeals for the Fifth Circuit issued the following opinion:

> In view of the testimony of [the principal] as to the various problems which arise in the school due to the wearing of long hair by members of the student body and the testimony of certain students that their hair style had indeed created some problems during school hours, we cannot say that the requirement that appellants trim their hair as a prerequisite to enrollment is arbitraty, unreasonable of an abuse of discretion. Therefore, the school regulation as promulgated by the principal banning long hair, is not violative of the state

> constitution of statutes. . . .
> The [United States] Constitution does not establish an absolute right to free expression of ideas, though some might disagree. The constitutional right to free exercise of speech, press, assembly, and religion may be infringed by the state if there are compelling reasons to do so. The compelling reason for the state infringement with which we deal is obvious. The interest of the state in maintaining an effective and efficient school system is of paramount importance. That which so interferes or hinders the state in providing the best education possible for its people, must be eliminated or circumscribed as needed. This is true even when that which is condemned is the exercise of a constitutionally protected right.

Breen v. Kahi[21] (1969) was the first case in which a federal appellate court would rule in favor of the plaintiffs in a hair-style case. In a vote of two to one, the Court of Appeals, Seventh Circuit, invalidated the following regulation:

> Hair should be washed, combed and worn so it does not hang below the collar line in the back, over the ears on the side and must be above the eyebrows. Boys should be clean shaven; long sideburns are out.

The School board had argued during the district court trial that the school's regulation was valid and if the court allowed the students to disregard the school's regulation it would cause a major disruption of the part of the students. School authorities also asserted that learning to respect authority is a part of the education of students.

The district court made note of the lack of evidence in support of the school board's statements by replying:

> With respect to the "distraction" factor, the showing in this record consists of expressions of opinion by several educational administrators that an abnormal appearance of one student distracts others. There is no direct testimony of the educational administrators, it appears that the absense of factual

> data which might provide the amplification. With respect to the "comparative performance" factor, this record is equally barren. . . . No hard facts are adduced even from a limited sample to demonstrate that the academic performance of male students with long hair is inferion to that of male students with short hair, or that the former are less active or less effective in extra-curricular activities.

The court concluded, according to Reutter (1975), that the school authorities had not proven justification for the rule that "rudely invades. . . a highly protected freedom." The court then ordered the students reinstated and their records cleared of any notation of disciplinary action due to this proceeding. The court of appeals added to the district court's statements that "The right to wear one's hair at any length or in any desired manner is an ingredient of personal freedom protected by the United States Constitution."

Reutter found by comparing the circuit courts that there is a basic disagreement regarding the disposition of hairstyle cases. The Fifth, Sixth, Ninth, and Tenth Circuits have supported the validity of such hairstyle rules in general, whereas the First, Third, Fourth, Seventh, and Eighth Circuits have not. Within the courts themselves there has been disagreement as evidenced by several of the decisions having votes of two to one.

No reliable trend in decisions was found by Reutter in his study for or against school boards during this period. He did point out that courts during this period have accepted jurisdiction and have inquired into the reasons for the regulations. Also, the closeness of the scrutiny of the rules by the courts as

a whole has definitely increased and will probably continue to do so (Reuter, 1975:46).

VII. CLUBS, GANGS, AND SECRET SOCIETIES

Another area of legal concern to the building principal is students' desire to form exclusive groups. This may include the formal or informal inclusion and exclusion of members. In many instances, membership to the group is allowed only after a proving period that may include forms of hazing.

The 1912 case of Bradford v. Board of Education of City and County of San Francisco[22] became the first appellate case that involved a state statute regulating secret societies in public schools. The regulation stated that:

> From and after the passage of this act, it shall be unlawful for any pupil, enrolled as such in any elementary or secondary school of this state, to join or become a member of any secret fraternity, sorority or club, wholly or partly formed from the membership of pupils attending such public schools, or to take part in the organization or formation of any such fraternity, sorority or secret club; provided that nothing in this section shall be constructed to prevent anyone subject to the provisions of the section from joining the order of the Native Sons of the Golden West, Native Daughters of the Golden West, Foresters of America or other kindred organizations not directly associated with the public schools of the state.

The statute was first questioned by legal process on the grounds that it created a difference in the classification of students and the type of clubs that a student could participate in because only elementary and secondary schools came under the provision of the act. It was also contended that the statute granted

a privilege and immunity to the groups named in the statute and therefore could be considered an unequal application of the law.

In Reutter's (1975:60) description of the case, he pointed out that the court held the classification "elementary and secondary schools" to be valid. The court also upheld the exception of certain groups because these groups were not directly associated with the schools. In other words, the court ruled that the distinction between groups directly associated with the public schools and those that were not associated was a constitutional distinction and was allowed under law.

Continuing with the intent of regulations against secret societies, the 1970 Texas case of Passel v. Fort Worth ISD[23] is worth noting. In this case the Fort Worth school board formulated a regulation requiring parents of prospective students to sign a form stating that the student was not a member and would not join any secret group. The description of a secret society included the stipulation that additional group members were to be selected by the decision of the present membership rather than free choice of the student.

The regulation against and the description of the secret societies was challenged by groups involved in charitable organizations whose members were chosen by the mothers of active and present members. The suit was unsuccessful in the Texas state courts and the Texas Supreme Court denied certiorari in 1971. The courts did not feel that the statute infringed on the rights of association of students. The charitable clubs as stated were not the same

as those clubs that based membership on the qualifications of individual students (Boy Scouts, Girl Scouts, etc.) and were ruled to be in fact "secret societies".

According to Reutter (1975:66) the only case in which school authorities were not upheld in their regulation of secret societies was the 1922 case of Wright v. Board of Education of St. Louis[24]. The Supreme Court of Missouri held that the domain of the school ceased when the student reached his home unless his actions were such as to affect the discipline of the school. The court found that the evidence in this case did not support the school's claim that membership in a secret society outside of school was detrimental to the school's discipline.

VIII. OTHER TOPICS OF LEGAL CONCERN FOR BUILDING PRINCIPALS

Marriage and Parenthood

Many school boards have been involved in litigation regarding their regulations and policies that relate to married and/or pregnant students. The courts have faced and will continue to face the question as to what extent can school authorities limit the activities of married and/or pregnant students. In light of increased emphasis on individual liberties, courts are even reassessing past court rulings.

In 1969 a United States district court in Mississippi considered the case of Perry v. Grenada Municipal School District[25] and ruled on the school policy stating that unwed mothers of school age were excluded from the public schools. The basic concept of the

suit was that the policy violated the equal protection clause of the Fourteenth Amendment and was brought on behalf of all unwed mothers of school age.

In ruling against the school policy, the court pointed out the importance of education to all citizens of the United States. According to Reutter (1975:67), the plaintiffs presented evidence that those unwed mothers that are allowed to continue in school will be less likely to have a second illegitimate child. The court made a distinction between the situation of an unwed pregnant girl and that of an unwed mother by stating:

> The Court can understand and appreciate the effect which the presence of an unwed pregnant girl may have on the other students in a school.
> Yet after the girl has the baby and has the opportunity to realize her wrong and rehabilitate herself, it seems patently unreasonable that she should not have the opportunity to go before some administrative body of the school and seek readmission on the basis of her changed moral and physical condition. . . .
> . . . But after the girl has the child, she should have the opportunity for applying for readmission and demonstrating to the school that she is qualified to continue her education. The continued exclusion of a girl without a hearing or some other opportunity to demonstrate her qualification for readmission serves no useful purpose and works an obvious hardship on the individual.

In the 1967 case of Anderson v. Canyon ISD[26], the plaintiff sought injunction against the school regulation that required students who married during the school term to withdraw from school for the remainder of the school year. The appellate court invalidated the rule, saying that it was arbitrary because it made marriage the basis for the denial of a student's right to obtain an education. In stating its ruling, the Court of Civil Appeals said that "If a

student is entitled to admission, the question of the length of exclusion is not material."

In another case, Bell v. Lone Oak ISD (Texas, 1974)[27], the Texas Court of Civil Appeals struck down a policy that kept married students from participating in extracurricular activities at the Lone Oak high school. The ruling was made by a two-to-one vote and the majority said that it was following previous decisions of several federal courts.

Demonstrations

The 1972 case of Tate v. Board of Education of Jonesboro, Arkansas, Special School District[28] proved that school authorities could discipline demonstrators. The Court of Appeals, Eighth Circuit, decided that the school could discipline twenty-nine black students who walked out of a pep rally when the song "Dixie" was played. The rally had been scheduled in advance, the school had a rule expressly forbidding disturbances in assemblies, it was known beforehand that "Dixie" would be played, and those who did not wish to attend the rally in the gymnasium were instructed to report to the auditorium. The black students in question went to the gymnasium and when "Dixie" was played they rose in mass and left the pep assembly.

The court supported the position of the school authorities. Then it reveiwed at length the history of the sone "Dixie" and found that it was not racially abusive per se, nor was it being used in a racially offensive fashion.

In Karp v. Becker[29] (1973) the refusal of the school board to renew a teacher's contract touched off a demonstration by students. A student was suspended for carrying signs in support of the teacher and refusing to hand them over to the principal when told to do so. The suspension of the student was voided by the court on the ground that the student was exercising First Amendment "pure speech" and no disruption could be forecast by his actions.

In April, 1972, the United States Fifth Circuit Court of Appeals ruled in the case of Dunn v. Tyler ISD.[30] This case dealt with the walkout of 250 to 300 black studnets from the John Tyler High School over the selection of cheerleaders for the 1971-72 school year. In the original ruling from the United States District Court, Eastern District of Texas, the court had ordered immediate readmissison of those students that had participated in the walkout and that no disciplinary action could be taken by the school administrators.

The Court of Appeals reversed the District Court and, in general, upheld the school and its officials. The Court pointed out in its concluding statement that:

> . . . The conclusions which we have reached require reversal. However, because of the peculiar circumstances, we reinstate in part the order of the District Court, though for reasons different from those for which it was entered. A year has passed. The students are back in school or have graduated. There have been no further problems, and the cheerleader dispute is at rest. . . under the circumstances if would be an injustice to single out for adverse effect, by reentry on their records of notations removed by the District Court's order, only one group composed of those who are still in school and who submitted to interviews and who received valid suspensions. Therefore, we reinstate the order of the District Court insofar as it directed that notation of disciplinary

> action be removed from student records and that no further disciplinary or readmission procedures take place.

Drugs and Alcohol

According to Reutter (1975:84), the courts are in agreement that rules that bar possession, sale, or distribution of drugs to other students can and should be enforced by school authorities. The Court of Appeals of New York stated in the case of People v. Overton[31] (1967):

> The school authorities have an obligation to maintain discipline over the students. It is recognized that when large numbers of teenagers are gathered together. . . their inexperience and lack of mature judgment can often create hazards to each other. Parents, who surrender their children to this type of environment, in order that they may continue developing both intellectually and socially, have a right to expect certain safeguards.
> It is in the high school years particularly that parents are justifiably concerned that their children not become accustomed to antisocial behavior, such as the use of illegal drugs. The susceptibility to suggestion of students of high school age increases the danger.

In Kelly v. Martin[32] (1971) the Arizona Court of Appeals said:

> . . . that it did "not doubt the reasonableness" of a rule barring "unlawful use, possession, distribution of sale of drugs, alcohol, and other illegal contraband on school district property or at school sponsored functions. The use of drugs by students, either on or off the high school premises, bears a reasonable relation to and may endanger the health, saftey and morals of other students."

However, as Howard v. Clark[33] (1969) pointed out, if the student commits the offense while off school property and school officials did not witness it personally, the student may not be excluded on the basis that he was arrested and charged with criminal possession of illegal paraphernalia.

Student Conduct Away From School

According to Reutter (1975:86), one of the most-quoted cases that dealt with punishment of students for acts committed off the school campus was the 1925 case of O'Rourke v. Walker.[34] In this case a school principal used corporal punishment to discipline male students, who after arriving at their home, would abuse other students who were making their way home. The question that the appellate court faced was whether a school rule could control the conduct of students outside school hours after they reached their home. In ruling that the principal had the power to act as she did, the court said:

> Examination of the authorities clearly reveals the true test of the teacher's right and jurisdiction to punish for offenses not committed on the school property or going and returning therefrom, but after the return of the pupil to the parental abode, to be not the time or place of the offense, but its effect upon the morale and efficiency of the school, whether it in fact is detrimental to its good order, and to the welfare and advancement of pupils therein. If the conduct punished is detrimental to the best interests of the school, it is punishable, and in the instant case, under the rules of the school board, by corporal infliction.

The court, in answering the argument that the proper resort of the principal was to the parents or to the local legal authorities, stated:

> Some parents would dismiss the matter by saying that they give no attention to children's quarrels; many would champion their children as being all right in their conduct. The public authorities would very properly say, unless the offense resulted in quite serious injury, that such affrays were too trifling to deserve their attention. Yet the harm to the school has been done, and its proper conduct and operations seriously harmed, by such acts.

Then the court pointed out that the plaintiff had reached his home but his victims had not.

CONCLUSION

In analyzing these cases of teacher and student rights, one must wonder why some of them even made it to the courtroom. Reutter (1975), in lending his expertise to this question, felt that one major factor is the clinging, by some school officials, to perrogatives of authority more fitted to a military operation than to an educational endeavor. Even in some of those cases decided in favor of school districts, we must wonder what were the real costs to the educational processes of the school and to the student body as a whole.

A substantial proportion of the cases discussed in this handbook involve forms of teacher and student expression. Educational writers and speakers, almost as a unified voice, say the prime function of the school is to develop effective citizens for our democracy. It is therefore disturbing to examine the types and extent of authority that some school officials will attempt to justify in court.

It is an established fact that those school officials that act prudently and in good faith and follow the guidelines of due process will not be found in court as often as those who do not. The school administrator must make his judgements and decisions, involving both staff members and students, in a non-discriminatory manner. He cannot allow himself to make arbitrary, malicious, or vindictive decisions or statements. He must take time to think of

possible outcomes, if his chances of going to court are to be lessened.

The last decade has seen an increase in the questioning of authority in general and school authority in particular. The school is a governmental agency and has a daily effect on students and parents. Therefore, the attitude that the school and its officials project is important in the development of a general attitude toward government.

The receptiveness of many federal courts to suits brought by teachers and students under the revitalized Civil Rights Act of 1871 is a new factor that has contributed to an increase in published judicial opinions in this area. Hopefully, better prepared cases in the future will more clearly define the rights of teachers and students and the powers and duties of the school officials. As Reutter has said:

> Legally, who wins the case is not nearly as crucial as why the decision was made. Educationally, who wins the case is not nearly as crucial as why the dicipline situation could not have been resolved short of recourse to the public, adversary forum of a court. (Reutter, 1975:93)

CASE REFERENCE

1. Gault v. _____, 387,U.S.1 (1967).

2. Mandera v. Board of Education of the City of New York,386 F.2d 778.

3. Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S. Ct. 733 (1969).

4. Goss v. Lopez, _____ v. _____, 43 L. W. 4181 (1975).

5. Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966).

6. Blackwell v. Issaquena County Board of Education, 363 F.2d 749 (5th Cir. 1966).

7. Melton v. Young, 465 F.2d (6th Cir. 1972), cert. denied, 93 S. Ct. 1962 (1973).

8. Banks v. Muncie Community Schools, 433 F. 2d 292 (7th Cir. 1970).

9. Smith v. St. Tammany Parish School Board, 448 F.2d 414 (5th Cir. 1971).

10. Augustus v. School Board of Escambia County, 361 F. Supp. 383 (N. D. Fla. 1973).

11. Grayned v. City of Rockford, 408 U.S. 104, 92 S. Ct. 2294 (1972).

12. Shanley v. Northeast Independent School District, Bexar County, Texas, 462 F.2d 960.969 (5th Cir. 1972).

13. Sullivan v. Houston Independent School District, 307 F. Supp. 1342 (S.D. Tex. 1969).

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GLOSSARY OF LEGAL TERMS

Action. An ordinary proceeding in a court by which one party prosecutes another for the enforcement or protection of a right, the redress of a wrong, or the punishment of a public offense. In common language, a "suit," or "lawsuit."

Action at law. Court action in a law case, as distinguished from equity.

Actionable. That which furnishes legal grounds for an action. Sometimes a court will say "The action will lie," meaning that the circumstances are such that there is a ground for court action.

Ad Litum Latin, meaning for the purpose of the suit, usually used when minors are, in fact, the plaintiffs. Because they are minors they must sue "by next friend," referring to parent or guardian who is plaintiff for the purpose of the suit.

Agency shop. Term in labor law meaning that though a worker is not required to join a union, he must pay his share of the cost of negotiating and servicing the master contract to the union, usually the equivalent of the union's dues. See Closed shop and Union shop.

Allegation. Statement in pleadings, setting forth what the party expects to prove.

Allege. To state, assert, or charge; to make an allegation.

Amicus curiae. "Friend at court"--one who volunteers or is requested to give information to the court regarding some matter of law in regard to which the judge is doubtful or mistaken; one who has no right to appear in a case but is allowed to file a brief or enter into the argument because of an indirect interest.

Annotation. Notes or commentaries in addition to the principal text. A book is said to be annotated when it contains such notes.

Appeal. An application to a higher court to rectify the decision of a lower court.

Appellant. The party who takes an appeal from one court to another.

Appellee. The party against whom an appeal is taken.

Arbitrary. Not supported by fair cause and without reason given.

Arbitration. Submission of a controversy, usually in labor disputes, for determination. See Mediation.

Assault. An attempt to beat another, without touching him. See Battery.

Attractive nuisance. A condition, instrumentality, machine, or other agency, dangerous to young children because of their inability to appreciate its danger although they may be expected to be attracted to it. See Nuisance.

Avoid a contract, To cancel and make the contract void.

Battery. An unlawful beating or other wrongful physical violence inflicted on another without his consent. The offer or attempt to commit a battery is an assault. The two words are usually used together.

Bill. A written complaint filed in a court.

Bill of attainder. An act of the legislature inflicting a penalty (technically capital punishment) without conviction in judicial proceedings. Loosely used to include all legislation imposing a penalty applicable to acts not considered a crime when committed.

Breach of contract. Failure without legal excuse to perform part of the whole of a contract.

Certificate. A document designed as notice that some act has been done, or some event occurred, or some legal formality complied with; evidence of qualification.

Certiorari. An action to remove a case from an inferior to a superior court. It is most commonly used when the United States Supreme Court is requested to hear a case from a lawer court.

Citations. References to law books. A citation includes the book where the reference is found, the volume number, and section or page numbers. A uniform system of abbreviations in case law has been adopted, but statutory materials differ from state to state according to the official designation accepted by the legislature.

Citations,judicial. References to court decisions. Citations in the case materials in this text refer to official state reports and to the National reporter, and the page number follows it. In parentheses is the name of the state where the decision was rendered, and its date. A complete judicial citation includes everywhere that the case may be found, but for school-law work complete parallel citations are unnecessary.

Citations, statutory. References to statutes; where the statute may be found in publicly available form. Statutory citations in this text include the name of the volume, the title and/or chapter, and the section number (s) quoted.

Civil action. One brought to recover some civil right, or to obtain redress for some wrong.

Class bill or suit. A case in which one or more in a numberous class, having a common interest in the issue, sue in behalf of themselves and all others of the class.

Closed shop. Term in labor law meaning that worker must be a member of the union as a condition precedent to employment. See Union shop.

Code. A compilation of statutes, scientifically arranged into chapters, subheadings, and sections, with a table of contents and index.

Codification. Process of collecting and arranging the laws of a state into a code.

Collateral attack. An attempt to destroy the effect of a judgment by reopening the merits of a case or by showing reasons why the judgment should not have been given, in an action other than that in which the judgment was given; that is, not in an appeal.

Common Law. As used in this text, legal principles derived from usage and custom, or from court decisions affirming such usages and customs, or the acts of Parliament in force at the time of the American Revolution, as distinguished from law created by enactment of American legislatures.

Concurrent jurisdiction. Two courts having the same quthority.

Concurring opinion. An opinion written by a judge who agrees with the majority of the court as to the decision in a case, but has different reasons for arriving at that decision.

Consideration in contracts. The inducement, usually an amount of money.

Constitution. The supreme Organic and fundamental law of a nation or state, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers.

Contract. An agreement upon sufficient consideration, to do or not to do a particular thing; the writing which contains the agreement of the parties, with the terms and conditions, and which serves as proof of the obligation.

Contract action.. An action brought to enforce rights under a contract.

Credibility of witnesses. Worthiness of belief of testimony of witnesses.

Criminal action. Proceeding by which a party charged with a crime is brought to trial and punishment.

Damages. Pecuniary compensation or indemnity which may be recovered in court by the person who has suffered loss or injury to his person, property, or rights through the unlawful act, or omission, or negligence of another.

De facto officer. One who is in actual possession of an office without lawful title; as opposed to a de jure officer.

De Jure officer. One who has just claim and rightful title to an office, although not necessarily in actual possession thereof.

Declaratory relief. A judgment which declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

Decree. Order of court of equity announcing the legal consequences of the facts found.

Defendant. The party against whom relief or recovery is sought in a court action.

Defendant in error. Defendant in appellate court when the "appeal" is for review on writ of error.

Defense. That which is offered and alleged by the defendant as a reason in law or fact why the plaintiff should not recover.

Demurrer. Allegation by one party that other party's allegations may be true but, even so, are not of such legal consequence as to justify proceeding with the case.

Dictum. Statement of a legal principle by a court, which principle is not necessitated by the facts or the law of the case; because such statements are not directly in point, they are not controlling precedents, though often persuasive.

Directory. An instruction of no obligatory force and involving no invalidating consequences for its disregard.

Dismissed for want of equity. Case dismissed because the allegation in the complaint have been found untrue, or because they are insufficient to entitle complainant to the relief sought.

Dissenting opinion. The opinion in which a judge announces his dissent from the conclusions held by the majority of the court.

Divisible contract. One which can be separated into two or more parts not necessarily dependent on each other nor intended by the parties to be so.

Discrimination, unconstitutional. The effect of a statute which confers particular privileges on a class arbitrarily selected and for whom no reasonable distinction can be found.

Due process. The exercise of the powers of government in such a way as to protect individual rights.

Ejusdem generis. Of the same kind, class, or nature. In statutory construction the ejusdem generis rule is that, where general words follow an enumeration of words of a particular and specific meaning, the general words are not interpreted in their widest sense but as applying to persons or things of the same general kind or class as those specifically mentioned.

Emancipation of child. Surrender of the right to care, custody, and earnings of a child by its parents who at the same time renounce parental duties.

Enforceable contract. [illegible] contract not void or voidable because defective.

Enjoin. To require a person, by writ of injunction from a court of equity, to perform, or to abstain or desist from, some act.

Equitable relief. Decree in court of equity.

Equity. As used in this text, the field of jurisprudence differing in origin, theory, and methods from the common law.

Estop. To prevent.

Estoppel. A bar raised by the law which prevents a man from alleging or denying a certain fact because of his previous statements or conduct.

Ex post facto. After the fact. An ex post facto law is one passed after an act which retrospectively changes the legal consequences of that act. The Federal Constitution prohibits the passage of ex post facto laws, referring to criminal laws only. See Bill of attainder and Retroactive.

Ex rel. Abbreviation for ex relatione, meaning on relation or information. For the purpose of this text, it is an action taken by a state official (attorney general) at the instigation of an individual with a private interest in the case.

Except on. In civil procedure, a formal objection to the action of the court when it refuses a request or overrules an objection, implying that the party excepting does not acquiesce in the court's ruling and may base an appeal thereon.

Executed congract. A completed contract as opposed to one which is executory.

Executory contract. An incompletely performed contract; something yet to be done in the future.

Governmental immunity. Immunity from tort actions enjoyed by governmental units in common-law states.

Hearing on the merits. Trial on the substance of a case as opposed to consideration of procedure only.

Hearsay evidence. Testimony given by a witness who relates what others have told him or what he has heard said by others, rather than what he knows personally.

In loco parentis. In place of the parent; charged with some of the parents' rights, duties, and responsibilities.

In re. Concerning. When used in a title of a court case, it indicates the type of case, often one in which there are no adversaries, but a matter requireing judicial action.

Indivisible contract. One which forms a whole, the performance of every part a condition precedent to bind the other party; as opposed to a divisible contract which is composed of independent parts the performance of any one of which will bind the other party only as far as it goes.

Information. An accusation against a person.

Infringement. An encroachment upon or invasion of one's rights.

Injunction. A prohibitive writ issued by a court of equity forbidding the defendant to do some act he is threatening, or forbidding him to continue doing some act which is injurious to the plaintiff and cannot be adequately redressed by an action of law.

Injuncation, temporary. An injunction granted at the beginning of a suit to retrain the defendant from doing some act, the right to which is in dispute, and which may be discharged or made permanent according to the result of the case after the rights of the parties are determined.

Invalid. Not binding; lacking in quthority.

Ipso facto. By the fact itself.

Judgment. Decision of the court, usually that part involving the payment of damages.

Judgment-proof. Said of those against whom a judgement has been rendered even though they are not in financial condition to pay it.

Laches. Omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejedicial to the adverse party.

Law. (1) system of principles or rules of human conduct. In this sense it includes decisions of courts as well as acts of legislature. (2) An enactment of a legislature, a statute.

Legal disability. Lack of legal capacity to perform an act.

Legal power. The right or ability to do some act.

Liability. Legal responsibility.

Liquidated damages. A specific sum of money stipulated by the parties by bond or contract as the amount of damages to be recovered by one party for breach of the agreement by the other.

Majority opinion. The statement of reasons for the views of the majority of the members of the bench in a decision in which some of them disagree.

Majority rule. A legal principle upheld by the majority of decisions on the question, when there is a lesser number of decisions to the contrary on the same issue.

Malfeasance. Commission of an unlawful act, applied to public officers and employees. See Misfeasance and Nonfeasance.

Malum prohibitum. An act pronibited by positive law, not necessarily wrong immoral inherently.

Mandamus. A writ to compel a public body or its officers to perform a duty.

Mandatory. Compulsory, referring to a command for which disregard or disobedience is unlawful.

Mediation. Attempt to reconcile differences, usually in labor disputes. See Arbitration.

Minority rule. The principle upheld by some courts on an issue which has been decided to the contrary by the majority of courts.

Misdemeanor. An offense lower than a felony and usually punishable by fine, or imprisonment otherwise than in a penitentiary.

Misfeasance. Improper performance of a lawful act. See Malfeasance.

Non feasance. Omission to perform a required duty.

Nolens volens. With or without consent.

Nonfeasance. Omission to perform a required duty.

Nolens volens. With or without consent.

Nonsuit. Judgment against a plaintiff when he is unable to prove a case, or when he neglects to proceed to the trial of a case after it has been put in issue.

Nuisance. A continuous condition or use of property in such a manner as to obstruct proper use of it by others lawfully having right to use it, or the public.

Parol-evidence rule. Oral evidence as to matters not contained in a written contract or other instrument is not admissible.

Persuasive value. Influence of decisions of one jurisdiction in another jurisdiction.

Petition. The written application or prayer to the court for the redress of a wrong or the grant of a privilege or license.

Petitioner. The one who presents a petition to the court; same as plaintiff in other kinds of cases.

Plaintiff. Person who brings an action; he who sues by filing a complaint.

Plea in abatement. Anobjection to the place, method, or time of plaintiff's assertion of a claim, without disputing the justice of the claim.

Pleadings. Formal papers filed in court action including complaint by plaintiff and defendant's answer, showing what is alleged on one side and admitted or denied on the other side.

Plenary. Complete power, usually applied to legislatures over matters within their entire jurisdiction; applicable also to any public officer who has unqualified power in a designated matter.

Police power. As used in this text, legislative power to enact laws for the comfort, health, and prosperity of the state; for the general welfare of the people concerned.

Power. The authority to do something expressly or impliedly granted.

Prayer. The part of a petition in which petitioner requests the court to grant the relief sought.

Precedent. A decision considered as furnishing an example or authority for an identical or similar case afterward arising on a similar question of law.

Prima facie case. A case in which the evidence is so strong that the adverse party can overthrow the evidence only by sufficient rebutting evidence.

Privilesof parties. Persons connected with mutual interest in the same action.

Quantum meruit. An implication that the defendant had promised to pay plaintiff as much as he reasonably deserved for work or labor.

Quasi-. As if, or almost as if it were, eg., quasi-judicial act of a school board in holding a hearing before dismissal of a teacher.

Quo warranto--information in the nature of a quo warranto. Method of trying title to a public office.

Ratification. Confirmation of a transaction by one who before ratification and the optional right to relieve himself of its obligation.

Regulations. Rules for management or government.

Relator. One on whose complaint certain writs are issued; for all practical purposes, the plaintiff.

Relief. The redress or assistance which a complainant seeks for from the court; not properly applied to money damages.

Remand a case. To send the case back to the court from which it came for further proceedings there, after an appellate decision.

Res adjudicata. A matter judicially decided.

Rescission of contract. Cancellation or abrogation by the parties, or one of them.

Respondent. Defendant in certain kinds of cases.

Restrain. To prohibit from action; to enjoin.

Retroactive. A law which creates a new obligation on considerations already past, or destroys or impairs former privileges. Not all retoractive laws are unconstitutional.

Right. A power or privilege in one person against another.

Scienter. Knowingly; defendant knew the circumstances leading to his injury. Used chiefly in loyalty laws.

Stare decisis. Principle that when a court has made a declaration of a legal principle it is the law until changed by competent authority; upholding of precedents within the jurisdiction.

Statute. Act of the legislature.

Stipulation. (1) A particular provision in an agreement; (2) an agreement between counsel concerning business before a court.

Subpoena. Process commanding a witness to appear and testify.

Sufficiency of evidence. Evidence adequate in character, weight, or amount to justify legal action sought.

Tenure. In its general sense, mode of holding an office or position, especially with respect to time.

Tort. Legal wrong committed upon the person, reputation, or property of another, independent of contract.

Ultra vires. Acts beyond the scope of authority.

Union shop. Term in labor law meaning that, although nonmembers of the union may be employed, they must join the union within a designated time or face dismissal.

Validity. Legal sufficiency in contradistinction to mere regularity.

Vested right. A right which has so completely and definitely accrued or settled in a person that it cannot be cancelled or impaired.

Void. Ineffectual, having no legal force or binding effect; said of a contract so defective that nothing can cure it.

Voidable. That which may be avoided or declared void; as to contracts, a defective instrument which can be cured by ratification by the one who could have avoided it.

Waive. To renounce or abandon a right.

Waiver. Intentional and voluntary relinquishment of a known right.

Without prejedice. No rights or privileges will be considered waived or lost.

Writ in vacation. Court order issued during intermission of court session.

Writ of error. Appellate court orders lower court to submit record of an action on which the lower court has reached a final judgment, so that the appellate court may examine the alleged errors of the lower court (Pemmlein and Ward, 1970:371--78).